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D.B. CIVIL WRIT PETITION NO.6977/2006

I.M.GAURI VS.

1.Union of India
2.The Senior Manager,NPC
3.Dy. Secretary to Govt.of India
4. The Addl. Secretary to Govt. of India

Date:- 10.08.2007

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. MAHESH CHANDRA SHARMA,J.

Mr.R.S.Saluja, for the petitioner.
Mr.Arun Bhansali, for the respondents.

Heard learned counsel for the parties.

This petition is directed against the order passed by the Central Administrative Tribunal, Jodhpur dated 8.9.2006, rejecting the application of the petitioner, challenging the imposition of penalty of reduction to lower stage of Rs. 4500/- in the time scale of pay Rs. 4500-125-7000 for a period of two years with cumulative and immediate effect.

The petitioner was appointed and rendered his services in Nuclear Training Center, Rawatbhata vide memorandum dated 16.03.1994. The petitioner was charge sheeted for misconduct, of remaining absent from the duty unauthorizedly on various dates between 1992-1995 without any valid cause. The petitioner had failed to report on

duty despite repeated instructions amounting to misconduct of disobeying the orders of superiors and directed that while functioning as Tradesman 'D', the petitioner's father and wife were engaged as petty contractor with the centre without disclosing their relationship with the petitioner.

In the first instance, by order dated 23.05.1996, the petitioner was removed from service, which was affirmed by the Appellate Authority dated 19/23.3.98. The said order was set aside by the Tribunal vide order dated 31.07.2000 in Original Application No. 172/98 holding that no notice of hearing was given to the petitioner in connection with hearing dated 15.03.1995 and, therefore, the continuance of enquiry without informing the date of hearing to the delinquent officer, stood vitiated.

Though the Tribunal made certain observations on the merit of findings recorded by the Enquiry Officer, it rested its decision on the lacuna found in the enquiry and remanded the matter back to the Disciplinary Authority.

The Tribunal has stated that since in the instant case there is a procedural lapse on the part of the Enquiry Officer, the proceedings and the findings in the impugned

orders of punishment by Disciplinary Order dated 23.05.1996 as well as the Appellate Order dated 19/23.3.98 were quashed and the petitioner was directed to be reinstated without any emoluments of the backwages.

However, it was made clear that the said period shall be counted as continuance of service by the respondents. But they were left at liberty to restart the enquiry from the stage as was then existing on 15.03.1995. Though, the order does not appear to be happily worded, it clearly conveyed that the matter was remitted back to the respondents for continuing the enquiry w.e.f. 15.3.95 from whatever stage it was standing as on the date, reinstatement of the petitioner was ordered for the purpose of continuation of enquiry treating his services to be continued. But since the incumbent was not exonerated so far he was held not entitled to back wages.

Pursuant thereto the enquiry was continued from that stage by appointing afresh Presenting Officer. On receipt of enquiry report show cause notice was given to the petitioner along with enquiry report. Explanation was sought from the petitioner and vide order dated 3.3.2004 punishment of reducing him to lower stage of Rs. 4500/- in the time Scale of

Pay of Rs. 4500-7000/- for a period of two years, was imposed.

On appeal, the Appellate Authority rejected the appeal by order dated 25.5.2005. This led to filing of the Original Application before the Tribunal which has been dismissed by the order dated 08.09.2006, which is under challenge.

The petitioner in the first instance has contended that continuation of the enquiry and punishment imposed result in double jeopardy for the petitioner, inasmuch as the Tribunal in earlier order had held that charges levelled against the petitioner have not been proved, and he has already been punished by denying him backwages.

This contention is stated only to be rejected for the reasons discussed above, we have already noticed that the Tribunal in its earlier order has set aside the order of punishment only on the ground that the petitioner was not given adequate opportunity of hearing inasmuch as he was not informed of next date of hearing after 15.03.1995. Since the matter was remanded back, the petitioner has not been given backwages at that stage as the petitioner has not

been exonerated in pursuance of inquiry. The earlier order having not been challenged had became final. The continuance of enquiry in pursuance of said order cannot now be challenged here.

It was next contended by learned counsel for the petitioner that the Disciplinary Authority has not considered the defence and explanation before accepting the findings of the Enquiry Officer and for that reason the order of the Disciplinary Authority was vitiated. It is pointed out by learned counsel for the petitioner that the Enquiry Officer has found charges 1 & 2 were proved against the petitioner. Charge 3 / 4 were not found proved against the petitioner.

He has submitted the detailed explanation in respect of findings recorded against him by the Enquiry Officer about his absence from duty during period in question. He further explained that because of serious sickness of his parents and old grandmother who was suffering from cancer and are totally depending on him, he was required to visit his village frequently for looking after them and , therefore, he had to leave for village. He also pointed out that he had applied for leave with medical certificates and has not availed leave except under

exceptional circumstances. He had stated that before going he has informed his colleague to inform his superior about his absence from duty and it has always followed by application for grant of leave. Regarding charge No.2 about not reporting on duty despite being called several times, he had specifically submitted the details when he received information about his recalling on duty on 24.02.1993, 11.05.93 and 30.09.1993 and he has reported back on duty immediately. He has also drew attention of the Disciplinary Authority to the statements of departmental witnesses who have stated about the petitioner that he has never disobeyed his superior. His defence against finding of charge 2 was at all considered.

Having gone through the material placed before us including explanation of the petitioner and the order of the Enquiry Officer, we find substance in the contention of the petitioner.

As to submission for reasons for absence from duty for long duration by the petitioner, it has been stated in the order of Disciplinary Authority

> "AND WHEREAS the said Shri Gauri has submitted a representation dated 25/1/2003 informing inter-alia that he had to go out of Station for the treatment of his family

> members and therefore, he could not perform his duty and requested to exonerate him from the charges framed against him. Assuming that it was absolutely necessary for Shri Gauri to attend to the ailing family members it was incumbent upon him to inform his Section Head. Therefore, the contention of Shri Gauri in this regard is not tenable.
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> "AND WHEREAS the undersigned, after going through the records of the case and the de-novo enquiry conducted as per the directions of the CAT, Jodhpur, and taking into account the gravity of offence committed by Sahri Gauri, has come to the conclusion that the ends of Justice shall meet if the penalty of 'Reduction to lower stage of Rs. 4500/- in the time scale of pay of Rs. 45-125-7000 for a period of two years with immediate effect is imposed on Shri I.M. Gauri."

Apart from above, no finding has been recorded that the reason given by the petitioner for his absence from duty was in correct in any manner. The finding supports the petitioner's case that his absence from duty was for valid reason. However, in this regard only charge that remain against the petitioner is about not informing about his absence to the Section Head at the relevant time.

So far as the charge No. 2 is concerned that the Delinquent Officer has remained unauthorizedly absent and has failed to report for duty in spite of repeated calls from the department, no reference has been made to explanation

submitted by the petitioner nor any finding in that regard has been recorded in the order imposing punishment. Thus there was a serious defect in consideration of the petitioner defence by the Disciplinary Authority before imposing punishment and it vitiates the punishment order.

The Appellate Authority as well as the Tribunal has apparently erred in not considering these patent facts appearing on record. From the perusal of material on record and after hearing the learned counsel for the parties we are further of the opinion that at least from the order of the Disciplinary Authority, it has been proved that though the petitioner had valid reason for remaining absent, he has not at best not informed the section head timely before he remained absent.

Absence from duty without valid reason and with valid reason cannot be equated and different consequences follow. Gravaman of first part of charge in remaining absence without valid reason. In the delinquent shows that he had valid reason to remain away from duty, the sting of charge is taken out. Similarly total non consideration of explanation about non informing the Section Head before leaving the office betrays non-application of mind and a closed mind to

the say of delinquent reducing the enquiry and opportunity of hearing an empty formality. Such a approach to a matter which has serious adverse effect on the career, growth and life of an employee is not permissible under the scheme of constitution which guarantees to every citizen equality before the law and freedom from arbitrary and unfair treatment at the hands of authorities.

So far as charge about disobeying the order and instructions given by the superior to report for duty in the light of specific defence taken by petitioner and non-consideration by the Disciplinary Authority it cannot be held against the petitioner.

We are of the opinion that at this stage when the petitioner has already undergone long duration of agony of enquiry and looking to nature of charge ultimately found against him as discussed above instead of remanding the case back, ends of justice will be met by suitably modifying the order of punishment in the light of only charge proved against him. The imposition of punishment of reducing the three grade increments without cumulative effect shall meet the ends of justice.

Keeping the aforesaid facts and his past service record the respondent would decide the claim for emoluments during the period between the termination of service he up to the date of reinstatement in accordance with the norms.

The petition is allowed with aforesaid directions. No order as to costs.

(MAHESH CHANDRA SHARMA),J. **(RAJESH BALIA),J.**

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